STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

███████

DECISION

CCO/143392

PRELIMINARY RECITALS

Pursuant to a petition filed August 27, 2012, under Wis. Admin. Code § HA 3.03, to review a decision by the Kenosha County Human Service Department in regard to Child Care, a hearing was held on November 07, 2012, at Kenosha, Wisconsin.

The issue for determination is whether Petitioner was overissued child care benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:
Petitioner:

███████

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703
      By: Karen Mayer
           Kenosha County Human Service Departme nt
           8600 Sheridan Road
           Kenosha, WI 53143

ADMINISTRATIVE LAW JUDGE:
David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # ███████) is a resident of Kenosha County.

2. The agency sent Petitioner a notice dated August 9, 2012 that informed Petitioner that he had been overissued child care benefits in the amount of $2671.32 for the time period of April 15, 2012 through July 31, 2012. Claim # ███████

3. That Petitioner's child care provider was paid for the time period involved here is not disputed.

4.	That Petitioner was not in an approved activity for the time period involved is not disputed.

5.	Petitioner's children were authorized for attendance based child care.

6.	Petitioner submitted an affidavit to the agency dated August 30, 2012 that indicated that his children did not attend the child care provider during the time involved here, that the dates of attendance shown on the sign-in/sign-out sheets from the provider did not match times when Petitioner had placement of the children per the placement schedule with their mother, that the children were never at the day care prior to 8:45 AM, that the initials on the sign-in/sign-out sheets for pickup of his children are not his writing and that the children stopped attending the involved day care provider in January 2012 because Petitioner's girlfriend or his mother provide child care for the children.

DISCUSSION

The Wisconsin Statutes, at *§49.195(3)*, state the following:

> A county, tribal governing body, Wisconsin works agency or the department shall determine whether an overpayment has been made under s. 49.19, 49.148, 49.155 or 49.157 and, if so, the amount of the overpayment…. Notwithstanding s. 49.96, the department shall promptly recover all overpayments made under s. 49.19, 49.148, 49.155 or 49.157 that have not already been received under s. 49.161 or 49.19(17) and shall promulgate rules establishing policies and procedures to administer this subsection.

Child care subsidies are authorized in the Wisconsin Statutes, at *§49.155*; thus they are within the purview of *§49.195(3)*. Recovery of child care overpayments also is mandated by the *Wisconsin Administrative Code. Wis. Admin. Code, § DCF 101.23*. An overpayment is any payment received in an amount greater than the amount that the assistance group was eligible to receive, regardless of the reason for the overpayment or whose error caused the overpayment. *Wis. Admin. Code, § DCF 101.23(1) (g). Adm. Code.* Clearly, then, all overpayments, regardless of whose error caused the overpayment, are to be recovered. *Also see, Wisconsin Shares Child Care Assistance Manual (Manual), §2.3.1.*

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that was sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused child care to be granted for which the client was not otherwise eligible; documentation of the benefits actually paid; and Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, referral, and determination. The agency must establish by the "preponderance of the evidence" in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that "it is more likely than not" that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals.

The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

Here, while the provider did bill the Wisconsin Shares program for allegedly caring for Petitioner's children during the time period involved based upon sign-in/sign-out sheets that purportedly have Petitioner's initials; I am concluding that Petitioner has successfully rebutted that evidence. His credible testimony matched his sworn statement on the August 30 affidavit. I also note that the initials on the sign-in/sign-out sheets do not appear to match the first letter of his first and last name in his signature contained on the appeal form. I am, therefore, reversing this overpayment. Though I am not certain that the Division of Hearings and Appeals has authority to order the agency to do so, I would certainly suggest that the agency further investigate the provider's billing practices.

CONCLUSIONS OF LAW

That the evidence is not sufficient to demonstrate that Petitioner was overpaid child care benefits for the period involved here.

THEREFORE, it is <u>**ORDERED**</u>

That this matter is remanded to the agency with instructions to take the administrative steps necessary to rescind claim number ███████ This must be done within 10 days of the date of this order.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee, Wisconsin, this 21st day of December, 2012

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\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals
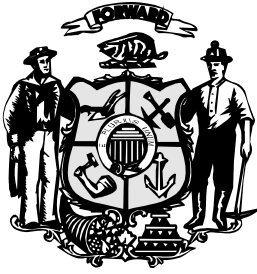
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The preceding decision was sent to the following parties on December 21, 2012.

Kenosha County Human Service Department
Public Assistance Collection Unit
Child Care Fraud